



SF 377 – Sex Act Definition (LSB1816SV)

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Fiscal Note Version – New

Requested by Senator Steven Soddors

Description

Senate File 377 broadens the definition of assault to include touching the breast of another, whether or not the touching was through the clothing or other covering. This is a serious misdemeanor assault. The Bill also amends Iowa Code section **709.11** to include assault with sexual intent. This crime is committing assault by touching the breast of another, whether or not the touching was through the clothing or other covering, with sexual intent. The penalties range from an aggravated misdemeanor to a Class C felony, depending on the extent of any injury.

Background

Correctional and Fiscal Information

- The new serious misdemeanor assault is a crime against a person. According to the Justice Data Warehouse ([JDW](#)), the Criminal and Juvenile Justice Planning Division ([CJJPD](#)) of the Department of Human Rights ([DHR](#)), and the Department of Corrections ([DOC](#)), the following are estimates for sentencing length of stay under supervision and costs for serious misdemeanor convictions for a crime against a person.

Criminal Justice System Information – Serious Misdemeanor Assault

Percent Sentenced to State Prison	Avg Length of Stay in State Prison	Marginal Cost per Day for State Prison	Avg Length of Stay on Parole	Percent Sentenced to Probation	Avg Length of Stay on Probation	Avg Daily Cost for Probation/Parole	Percent Sentenced to CBC Res. Facility	Avg Length of Stay in CBC Res. Facility	Marginal Cost per Day for CBC Res. Facility	Percent Sentenced to County Jail	Avg Length of Stay in County Jail	Marginal Cost per Day for County Jails
3.1%	6.9 months	\$ 18.92	7.5 months	52.1%	12 months	\$ 4.26	1.1%	5.8 months	\$ 11.55	59.2%	41 days	\$ 15.00

- The sentencing distribution is 115.5% because certain offenders are sentenced to county jail or a Community-Based Corrections (CBC) residential facility and then probation supervision.
- There were 113 charges disposed in FY 2014 for the various offense classes under Iowa Code section **709.11**. Of these, 48 charges were either dismissed or acquitted while 50 charges resulted in a conviction. The overall conviction rate for assault with intent to commit sexual abuse is 44.2%.
- There were 40 offenders convicted of the aggravated misdemeanor, nine offenders convicted of the Class D felony, and one offender convicted of the Class C felony under Iowa Code section **709.11**.
- Offenders sentenced under the provisions of Iowa Code chapter **709** are subject to sentencing enhancements because they are sex offenders. These offenders are subject to the requirements of the Sex Offender Registry ([SOR](#)) for at least 10 years per Iowa Code chapter **692A**. The SOR is administered by the Department of Public Safety ([DPS](#)). See the **Legislative Guide, Sex Offender Registry Law** published by the Legislative Services Agency (LSA) in November 2014 for additional information.
- Sex offenders are also subject to the Special Sentence imposed under Iowa Code chapter **903B**. Offenders on Special Sentence are supervised by the CBC District Departments.

- Sex offenders can be revoked from probation, parole, or Special Sentence supervision for technical violations or new convictions. The average length of stay in prison in the table below does not include time served for revocations.
- Sex offenders sentenced to prison are required to participate in a Sex Offender Treatment Program (SOTP). The table below does not include the average length of stay in treatment or the average daily cost of State prison-based SOTP.
- According to the JDW, the CJJPD, and the DOC, the following are estimates for sentencing, length of stay under supervision, and costs for sex offenders.

Corrections Supervision Information

	Percent Sentenced to State Prison	Avg Length of Stay in Prison	Marginal Cost per Day	Avg Length of Stay on Parole Including Special Sentence	Percent Sentenced to Probation	Avg Length of Stay on Probation Including Special Sentence	Percent Sentenced to CBC Res. Facility	Avg Length of Stay in CBC Res. Facility	Marginal Cost per Day	Percent Sentenced to County Jail	Avg Length of Stay in County Jail	Marginal Cost per Day
Agg. Misd.	31.5%	12.9 months	\$ 18.92	26.8 months	58.2%	76.3 months	9.6%	5.8 months	\$ 11.55	15.7%	79 days	\$ 15.00
Class D Felony	47.2%	32.0 months	\$ 18.92	26.8 months	51.6%	76.3 months	8.8%	5.8 months	\$ 11.55	0.0%	0	0.0%
Class C Felony	62.2%	66.5 months	\$ 18.92	Lifetime	36.1%	Lifetime	7.1%	5.8 months	\$ 11.55	0.0%	0	0.0%

- For aggravated misdemeanor offenders, the percent sentenced to State prison, probation, CBC residential facility, or county jail is 115.0%. The disposition of sentences exceeds 100.0% because certain offenders are sentenced to county jail or a CBC residential facility, and then probation supervision. For Class D felony offenders, the percent sentenced to State prison, probation, or a CBC residential facility is 107.6%. For Class C felony offenders, the percent sentenced to State prison, probation, or a CBC residential facility is 105.4%. The disposition of sentences exceeds 100.0% because certain offenders are sentenced to a CBC residential facility and then probation supervision.
- Generally, offenders convicted of a sex offense and supervised by a CBC District Department are placed on intensive supervision and gradually progress to normal supervision if they are successful. These offenders are usually placed on electronic monitoring for a period of their supervision. Sex offenders are required to participate in a SOTP while under CBC supervision. The table below shows supervision lengths of stay and costs that are unique to sex offenders convicted of an aggravated misdemeanor or Class D felony. Offenders convicted of a Class C felony sex offense are subject to lifetime supervision.

Information on Sex Offender Supervision in CBC District Departments

Avg Length of Stay on Special Sentence Only	Avg Length of Stay on Intensive Supervision While on Parole or Probation	Avg Daily Cost of Intensive Supervision for Sex Offenders	Avg Length of Stay on Normal Probation or Parole Supervision	Avg Daily Cost for Probation or Parole	Avg Length of Stay on Electronic Monitoring	Avg Daily Cost of Electronic Monitoring Device	Avg Length of Stay in SOTP CBC Only	Avg Daily Cost for SOTP CBC Only
54.9 months	42 months	\$12.80	34.3 months	\$4.26	26.4 months	\$3.15	38.8 months	\$5.08

- The [Fifth](#) CBC District Department's State General Fund appropriation includes funds for the statewide command center and electronic monitoring system. Electronic monitoring devices range in cost by type of device. Global Positioning System (GPS) Active devices are \$3.15 per day while GPS Passive devices are \$3.10 per day. Refer to the [Electronic Monitoring Report](#) issued by the DOC in October 2014 and published on the General Assembly's [website](#) for additional information.
- Some offenders receive a county jail sentence without a probation sentence. The special sentence starts once the county jail sentence is served. Offenders are then placed on CBC supervision.

- Approximately 81.2% of the marginal cost per day for CBC residential facilities is paid from local sources, such as offender rent.
- The cost per case for the [Indigent Defense Fund](#) is \$600 for a serious misdemeanor, \$1,200 for an aggravated misdemeanor or Class D felony, and \$1,800 for a Class C felony.
- The average cost per case for the [Judicial Branch](#) is \$213 for a serious or aggravated misdemeanor, \$436 for a felony, and \$929 for a Class D or Class C forcible felony. These estimates include the average time spent on all cases of the given type regardless of how the cases are disposed. Most cases are disposed by plea bargaining; only a small percentage is disposed by bench or jury trials. See the *Fiscal Topic, Jury Trials* published by the LSA in August 2013 for background information and statistics.

Minority Data Information

- The Bill creates a new crime of serious misdemeanor assault. No data exists for this activity. Refer to the LSA memo addressed to the General Assembly, [Minority Impact Memo](#), dated January 30, 2015, for information related to minorities in the criminal justice system.
- The table below shows the offender-based convictions for the various sex offenses in Iowa Code chapter [709](#). Blacks are disproportionately convicted of sex offenses, compared to their percentage of the Iowa population.

Racial Characteristics of Convicted Sex Offenders

White	Black	Hispanic	American Indian	Asian	Other/Unknown
70.9%	10.1%	5.5%	1.1%	0.2%	12.2%

Assumptions

Correctional and Fiscal Information

- Charge, conviction, and sentencing patterns and trends will not change over the projection period.
- Prisoner length of stay, revocation rates, plea bargaining, and other criminal justice policies and practices will not change over the projection period.
- The law will become effective July 1, 2015. A lag effect of six months is assumed from the effective date of this Bill to the date of first entry of affected offenders into the correctional system.
- Some criminal cases that do not meet the definition of assault or assault with sexual intent and are dismissed under current law will result in convictions under this Bill.
- Sentencing disposition and cost data for the new serious misdemeanor crime created in this Bill will be similar to the data for current serious misdemeanor convictions for crimes against a person.
- Marginal costs for county jails cannot be estimated due to a lack of data. For purposes of this analysis, the marginal cost for county jails is assumed to be \$15.00 per day.

Minority Data Information

- No data exists for the new crime of serious misdemeanor assault by touching the breast of another.
- The impact on minorities will be consistent with current data for the crime of assault with sexual intent.

Summary of Impacts

Correctional Impact

The correctional impact of the new crime of serious misdemeanor assault by touching the breast of another cannot be estimated. There are no data to provide a correctional impact projection.

Based on current sentencing patterns for serious misdemeanor crimes against a person, convicted offenders are likely to receive a sentence to county jail, probation, or both.

There will be an estimated 54 defendants annually charged with assault with sexual intent under this Bill. Of these, 24 will be convicted. On an annual basis, there will be 18 new aggravated misdemeanants, five Class D felons, and one Class C felon. It is expected the offenders will be sentenced as follows: nine to State prison, 13 to probation, two to a CBC residential facility, and three to county jail. Three offenders convicted of an aggravated misdemeanor are expected to receive a sentence of county jail or CBC residential facility and then probation supervision. The table below shows the annual sentences expected to be imposed by offense class for assault with sexual intent.

Annual Sentences by Offense Class Conviction

Offense Class	State Prison	Probation	CBC Res. Facility	County Jail	Total
Agg. Misd.	6	10	2	3	21
Class D Felon	2	3	0	0	5
Class C Felon	1	0	0	0	1
Total	9	13	2	3	27

The State prison population is expected to increase by four offenders in FY 2016, nine offenders in FY 2017, 12 offenders in FY 2018, and 14 offenders annually thereafter. The correctional impact on county jails and CBC residential facilities is expected to be minimal. The correctional impact on probation caseloads is expected to be six offenders in FY 2016, 19 offenders in FY 2017, 32 offenders in FY 2018, 45 offenders in FY 2019, and 58 offenders in FY 2020. Probation caseloads are expected to stabilize at about 58 offenders annually in FY 2020 due to the increased length of stay under supervision for sex offenders (42 months to 54.9 months).

Minority Impact

No data exists for the new crime of serious misdemeanor assault by touching the breast of another. To the extent this Bill results in additional criminal convictions for the crime of assault with sexual intent, there will be a disproportionate impact on minorities, especially Blacks. Blacks comprise approximately 3.3% of the Iowa population but represent 10.1% of the total number of sex offense convictions in FY 2014. Additional criminal convictions will result in an increased number of minority offenders supervised in the corrections system.

Fiscal Impact

The fiscal impact of the new crime of serious misdemeanor assault by touching the breast of another cannot be estimated. No data exists to provide a cost projection because the number of convictions cannot be estimated. The State's cost for one conviction is estimated to be about \$2,000. This estimate includes the cost to the Judicial Branch and CBC District Departments. The fiscal impact to county jail operating budgets is about \$1,000 per conviction.

The fiscal impact of the crime of assault with sexual intent is expected to be an increased cost of \$62,200 in FY 2016 and \$284,100 in FY 2017. The table below shows the fiscal impact by funding source. County jail costs are expected to level off in FY 2017 at approximately \$4,000 annually. State prison system costs are expected to level off in FY 2019 at about \$97,000 annually. The costs for CBC are expected to level off in FY 2020 at about \$213,000 annually.

Estimated Fiscal Impact by Funding Source

	FY 2016				FY 2017			
	State General				State General			
	County Budgets	Fund	Local Funds	Total	County Budgets	Fund	Local Funds	Total
Judicial Branch	\$ 0	\$ 8,000	\$ 0	\$ 8,000	\$ 0	\$ 15,000	\$ 0	\$ 15,000
Indigent Defense	0	14,000	0	14,000	0	32,000	0	32,000
Jail	1,200	0	0	1,200	4,000	0	0	4,000
State Prison	0	14,000	0	14,000	0	83,000	0	83,000
CBC	0	23,400	1,600	25,000	0	146,800	3,300	150,100
Total	\$ 1,200	\$ 59,400	\$ 1,600	\$ 62,200	\$ 4,000	\$ 276,800	\$ 3,300	\$ 284,100

The local funds are generated by offenders paying CBC residential facility rent.

If there is a significant number of prosecutions and convictions for the new crime of serious misdemeanor assault by touching the breast of another, the fiscal impact indicated in the above table may be underestimated.

Sources

Department of Human Rights, Criminal and Juvenile Justice Planning Division
Department of Corrections
Office of the State Public Defender
Office of the State Court Administrator

/s/ Holly M. Lyons

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The fiscal note for this bill was prepared pursuant to [Joint Rule 17](#) and the Iowa Code. Data used in developing this fiscal note is available from the Fiscal Services Division of the Legislative Services Agency upon request.